

REMARKS

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 3, 5-16, 18-21 and 23-29 are pending in the application. Claims 3, 6-14, 16, 18-21 and 24-29 are withdrawn by the Examiner. Claim 15 has been amended to better define the claimed subject matter. Claim 5 has been amended to depend on claim 15. No new matter has been introduced through the foregoing amendments.

Claims 3, 6-14, 16, 18-21 and 24-29 are withdrawn by the Examiner. The restriction is traversed for the reasons below.

Applicants respectfully submit that there would be no serious burden on the examiner if the restriction is not required, because claim 3, which was amended in the last Amendment to add the limitations of examined claims 17 and 22, has the features already examined on the merits in the Office Action of July 21, 2008. Therefore, the invention of claim 3 has been examined and constructively elected, contrary to the Examiner's position.

Further, claims 24-27 depend on elected claim 23, and should be considered by at least virtue of their dependency.

Accordingly, Applicants respectfully submit that claims 3, 6-14, 16, 18-21 and 24-29 are all directed to constructively elected invention and can be covered in a single search without serious burden and should be examined on the merits. Should the Examiner disagree, Applicants hereby reserve the right to petition to the Technology Center Director.

Claims 5, 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jitoe*. Applicants respectfully disagree for at least the reasons presented in previous Amendment.

Nevertheless, claim 15 has been amended and should be patentable for the reasons detailed as follows.

Independent **claim 15** has been amended to recite that the joining sites are each in the form of a dot and are all arranged only along, in vicinities of and between the transversely opposite side edges of the absorbent structure in the one of the front and rear waist regions. The amended claim 15 requires that the joining sites be arranged between the side edges of the absorbent structure. On the contrary, *Jitoe* as applied by the Examiner at Abstract appears to disclose that the auxiliary elastic members 21 are secured neither to the backsheet 3 nor to the absorbent core 4 in the area defined between the side edges 23, 23 of the absorbent core 4, that is, the auxiliary elastic members 21 are only bonded at the side edges 23, 23 of the absorbent core 4. (See, Fig. 1 of *Jitoe*). Therefore, there are no “joining sites” 13/25 of *Jitoe* located between the transversely opposite side edges 23 of the absorbent structure 4 in the one of the front and rear waist regions.

In addition, *Jitoe* as applied by the Examiner fails to disclose or suggest that a number of said joining sites are located between the middle portions of adjacent the auxiliary elastic members. More specifically, as disclosed in Fig. 1 of *Jitoe*, no “joining sites” 13/25 are located between the middle portions of adjacent the auxiliary elastic members 21B/21C/21D.

Accordingly, claim 15 and the respective dependent claims, are thus patentable over the art as applied by the Examiner.

Claim 5 has been rewritten in dependent form to depend on claim 15. Applicants respectfully submit that claim 5 should be patentable as well as on its own merits for the reason below.

The Examiner alleges that it is obvious that one of ordinary skill in the art would adjust the length of an elastic member and width of the absorbent structure to provide a relative dimension as claimed, e.g., “a length of said auxiliary elastic members in the waist-surrounding direction as

measured in a unstretched state thereof is substantially equal to a width of the absorbent structure in the waist-surrounding direction in the one of said front and rear waist regions.”

No disclosure of the claimed *unstretched state* can be found in *JP '225* and hence the claimed feature would not have been obvious over the art applied by the Examiner. Further, Applicants submit that “contracted” demonstrated in the Office Action by the Examiner is not equal to the unstretched state as claimed. “Contracted” means “reduced in compass or size”, whereas it is not necessary to require “unstretched” as “reduced in compass or size”. Therefore, even if the applied art would disclose contraction of the elastic members, the elastic members still cannot read on the claimed unstretched elastic member.

Conclusion

Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicants attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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